

1 Derek W. Loeser, *pro hac vice forthcoming*
2 Gretchen Freeman Cappio, *pro hac vice forthcoming*
3 KELLER ROHRBACK L.L.P.
4 1201 Third Avenue, Suite 3200
Seattle, WA 98101-3052
(206) 623-1900, Fax (206) 623-3384

5 Matthew J. Preusch (SBN 298144)
6 KELLER ROHRBACK L.L.P.
7 801 Garden Street, Suite 301
Santa Barbara, CA 93101
(805) 456-1496, Fax (805) 456-1497

8 *Attorneys for Plaintiff*

9
10 UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

11 PAMELA DELPAPA, and all others similarly
12 situated,

13 Plaintiff,

14 v.
15 WELL'S FARGO BANK, N.A.,

16 Defendant.

17 No. 3:20-cv-06009

**COMPLAINT
CLASS ACTION**

DEMAND FOR JURY TRIAL

18 Plaintiff Pamela Delpapa, individually and on behalf of all others similarly situated, brings this
19 class action complaint against Defendant Wells Fargo Bank, N.A. (“Wells Fargo”), and alleges as
20 follows:

21 **I. INTRODUCTION**

22 1. In March 2020, Congress passed and the president signed into law the Coronavirus Aid,
Relief, and Economic Security (“CARES”) Act, Pub. Law 116-136, March 27, 2020, 134 Stat. 281.
23 That Act included several provisions to help mortgage borrowers. One of those provisions permitted
24 borrowers affected by COVID-19 to request that their mortgage loan be temporarily placed in
25 forbearance.

26 2. What followed was emblematic of Defendant Wells Fargo’s negligent, reckless, and
willful mistreatment of its customers.

1 3. Instead of waiting for customers to *request* that Wells Fargo place their loan in
 2 forbearance, Wells Fargo automatically did so. Customers like Plaintiff Pamela Delpapa only found
 3 out about Wells Fargo's actions—if they found out at all—when they went to apply for credit and were
 4 denied, saw the forbearance noted on a credit report, or were unable to make a mortgage payment,
 5 among other circumstances.

6 4. In short, Wells Fargo so badly mismanaged this CARES Act program that the bank
 7 ended up hurting the very people Congress intended to help. And it did so at the worst possible time
 8 for people like Ms. Delpapa. She lost her job due to the COVID-19 pandemic and, because of Wells
 9 Fargo, was unable at that time to refinance her mortgage at more favorable rates.

10 5. Ms. Delpapa therefore brings this proposed class action case on behalf of herself and
 11 others similarly situated who Wells Fargo has harmed.

12 **II. JURISDICTION AND VENUE**

13 6. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act of
 14 2005, 28 U.S.C. § 1332(d), because at least one Class member is of diverse citizenship from one
 15 defendant, there are 100 or more Class members nationwide, and the aggregate amount in controversy
 16 exceeds \$5,000,000 exclusive of interest and costs.

17 7. This Court has personal jurisdiction over Wells Fargo because Wells Fargo's parent
 18 entity, Wells Fargo & Company, maintains its principal office in California, and Wells Fargo regularly
 19 conducts and/or solicits business in, engages in other persistent courses of conduct in, and derives
 20 substantial revenue from services provided to persons in this District and in California.

21 8. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(3) because the Court
 22 has personal jurisdiction over Defendant and Defendant has sufficient contacts with this District and
 23 California.

24 9. Venue is proper in the Northern District of California pursuant to 28 U.S.C. §
 25 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims at issue in this
 26 Complaint arose in this District.

III. INTRADISTRICT ASSIGNMENT

10. This case is properly brought in the San Francisco Division of the Northern District of California. Under Local Rule 3-2(c), cases are to be filed in the Division "in which a substantial part of the events or omissions which give rise to the claim occurred."

11. Because Wells Fargo's parent company maintains its headquarters in San Francisco, under Local Rule 3-2(e), the proper venue for this case is the San Francisco Division of the Northern District of California.

IV. PARTIES

12. Plaintiff Pamela Delpapa is a resident and citizen of Riverside County, California.

13. Defendant Wells Fargo Bank, N.A. is a national banking association chartered under the laws of the United States with its primary place of business in Sioux Falls, South Dakota. Wells Fargo Bank, N.A. provides Wells Fargo & Company personal and commercial banking services, and it is Wells Fargo & Company's principal subsidiary. Well Fargo Bank, N.A. is also the successor by merger of Wells Fargo Home Mortgage, Inc., and it is the principal operating subsidiary of Wells Fargo & Company, which is headquartered in San Francisco, California.

V. FACTUAL ALLEGATIONS

A. Wells Fargo's Faulty Forbearance Program

14. Congress provided in the CARES Act that borrowers with government-sponsored entity (“GSE”) mortgages—those backed by Freddie Mac or Fannie Mae—could request to suspend mortgage payments due to COVID-19 by having the loans put in forbearance.

15. When a mortgage servicer like Wells Fargo places a loan in forbearance, it permits borrowers to suspend or reduce mortgage payments for a limited time. However, those payments are not forgiven; they are just delayed. The borrower must still repay the missed payment in the future, often by adding them to the end of loan or—if the borrower is able—paying them off before the loan ends. Moreover, during forbearance, interest continues to accrue even though it is not being paid down.

16. The CARES Act provides affected borrowers the right to request and obtain a forbearance for up to 180 days as well as an extension for up to another 180 days (for a total of up to 360 days).

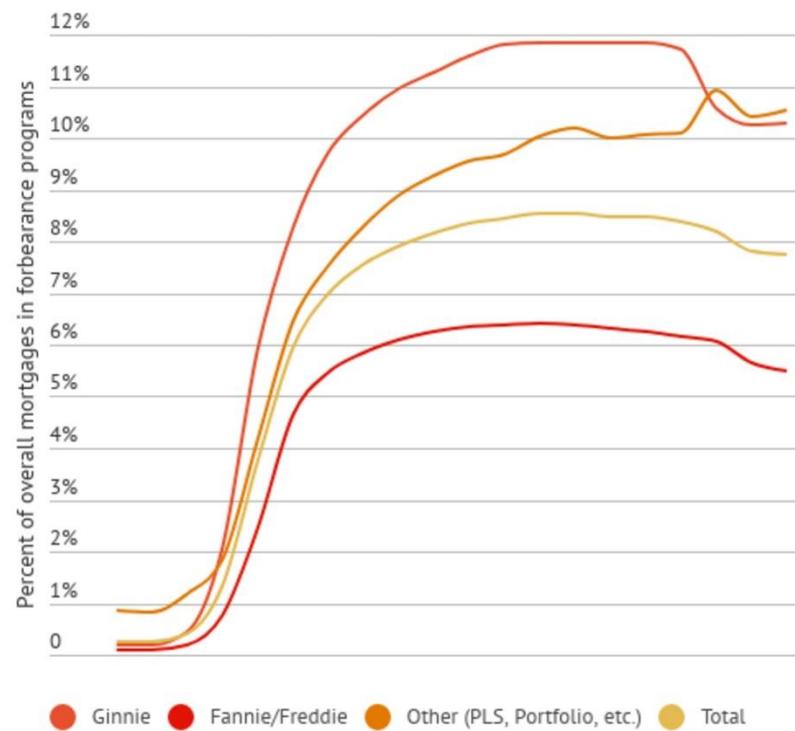
1 17. Specifically, Section 4022 of that Act provides that “a borrower with a Federally backed
 2 mortgage loan experiencing a financial hardship due, directly or indirectly, to the COVID–19
 3 emergency may request forbearance on the Federally backed mortgage loan, regardless of delinquency
 4 status, by— (A) submitting a request to the borrower’s servicer; and (B) affirming that the borrower is
 5 experiencing a financial hardship during the COVID–19 emergency.”

6 18. Under Section 4022, the default forbearance period is 180 days, but borrowers may also
 7 request a subsequent 180-day extension. However, “at the borrower’s request, either the initial or
 8 extended period of forbearance may be shortened.” As the U.S. Department of Housing and Urban
 9 Development’s Inspector General explained in an April report, “The borrower also has the option **at**
 10 **any time** to shorten the forbearance period and resume payments.” (emphasis added).

11 19. In addition, Section 4023 provides similar relief for borrowers with multifamily
 12 residential properties: “A multifamily borrower with a Federally backed multifamily mortgage loan
 13 that was current on its payments as of February 1, 2020, may submit an oral or written request for
 14 forbearance under . . . to the borrower’s servicer affirming that the multifamily borrower is
 15 experiencing a financial hardship during the COVID–19 emergency.” In response, the servicer “shall”
 16 document the financial hardship, provide a forbearance for up to 30 days, and provide extensions of the
 17 forbearance where warranted. Multifamily borrowers “shall have the option to discontinue the
 18 forbearance at any time” under Section 4023.

19 20. It appears millions of borrowers placed their loans in forbearance after passage of the
 20 CARES Act. As of August, the share of Fannie Mae and Freddie Mac loans in forbearance was 4.94%,
 21 according to the Mortgage Bankers Association. The Association estimated that 3.6 million
 22 homeowners are in forbearance plans. That’s down from a spike of about 4.3 million homeowners in
 23 forbearance as of June 2020, after passage of the CARES Act. This image from the Association shows
 24 the increase in forbearances after the onset of the pandemic and passage of the CARES Act:

Percent of mortgages in forbearance since start of the Covid-19 pandemic



Source: The Mortgage Bankers Association's Weekly Forbearance and Call Volume Survey. Data from March 8 to July 19, 2020.

21. Forbearance can help people in temporary hardship due to COVID-19. But a survey by LendingTree found that 70% of homeowners who have gone into forbearance did not need the relief.

22. The GSEs have advised servicers like Wells Fargo to make sure borrowers like Plaintiff are fully informed about the downsides to a forbearance. As Fannie Mae directed in an August 2020 “FAQ” for servicers: “It is important that the borrower go into the forbearance plan understanding that at the end of the forbearance period the forborne payments must be accounted for. Borrowers should not be left with the impression that the missed payments are forgiven.”

23. In addition, as Fannie May reminded servicers in a July 15, 2020 Lender Letter (LL-2020-02) “servicers must inform the borrower that the payments which are the subject of a forbearance

1 plan have only been delayed or reduced, not forgiven, and that once the forbearance plan is complete,
 2 one of the following must occur:

- 3 • the mortgage loan must be brought current through a reinstatement,
- 4 • the borrower is approved for another workout option,
- 5 • the mortgage loan is paid in full, or
- 6 • the servicer refers the mortgage loan to foreclosure in accordance with
 7 applicable law”

8 24. Regardless of whether a borrower needs the help or not, or is fully informed of the
 9 consequences, lenders may not put a loan in forbearance without a customer requesting it. As the
 10 Consumer Financial Protection Bureau explains, “You must contact your loan servicer **to request** this
 11 forbearance.” Banks may not institute it automatically.

12 25. But that’s exactly what Wells Fargo did. As documented by Plaintiff and in consumer
 13 complaints from across the nation, Wells Fargo automatically placed borrowers in forbearance when
 14 they contacted the bank by phone or online to merely inquire about their options.

15 26. As one consumer told the Consumer Financial Protection Bureau, a Wells Fargo
 16 employee admitted “that the system is like a ‘hair trigger’” automatically placing loans into
 17 forbearance, “even though I did nothing to start a forbearance.”

18 27. Wells Fargo has conceded in a statement to the press that it “may have misinterpreted
 19 customers’ intentions.”

20 28. That “misinterpretation” was widespread. The Consumer Financial Protection Bureau’s
 21 database of consumer complaints lists numerous examples of similar complaints. This is a sample:

- 22 • “Due to a job loss, I reached out to Wells Fargo and asked for information on
 23 their Covid-19 mortgage relief program. To clarify, I only asked for information on the
 24 program. The representative on the phone stated that an information packet would be mailed to
 25 me. About a week later, a letter arrived from Wells Fargo stating that they are ‘confirming short
 26 term payment relief for the account.’ This was not what I had requested. In addition, the letter
 27 states ‘We won’t report this account to consumer reporting agencies.’ It has now come to light
 28 that Wells Fargo has put a forbearance on the mortgage, preventing any ability to refinance.”

1 • “Wells Fargo put my account in forbearance when I didn't request it. After
 2 talking to multiple individuals on the phone I was told that if you click the 'more info' button
 3 on the site that you will be automatically enrolled without asking.”

4 • “Wells Fargo will NOT allow us to end our forbearance. We have spent over 7
 5 hours trying to reach them to resolve this.”

6 • “[W]e started getting email about COVID-19 relief from Wells Fargo, regarding
 7 mortgage assistance. I sent them an email for more information. . . I tried to pay my house note
 8 on the WF app, as I have always done. The app advised me that I did not have an active
 9 account, that's when we called to make the payment. We were told that our loan was in
 10 forbearance and we could make a payment, but it would not post to the loan until after the
 11 forbearance period was over.”

12 • “I contacted my mortgage company WELLS FARGO to inquire about what
 13 types of services were available IF my renter 's were unable to make their payment due to
 14 covid. It was for an inquiry purpose and I was told that I would receive a letter regarding any
 15 programs available. . . . I did in fact receive a letter and in that letter it stated my mortgage was
 16 placed in forbearance! I did not request any forbearance. Recently I was notified by a lender
 17 that it showed on my credit report and have been trying to have it removed since then.”

18 • “Wells Fargo put me into CARES act forbearance without my consent. I was
 19 unable to make a payment online like I usually do. I called and was on hold for an hour but
 20 finally was able to talk to a rep, I told them they put me into forbearance without my
 21 consent. He apologized and said that the system is like a 'hair trigger' even though I did
 22 nothing to start a forbearance, I've never missed a payment, have no reason to apply for
 23 forbearance and am able to make payments.”

24 • “Wells Fargo has placed or enrolled me in forbearance without my permission.
 25 This has negatively impacted me as [redacted] has placed my home equity mortgage
 26 application in denial status because of this.”

27 • “I did not sign anything to agree to forbearance and subsequent calls to them I
 28 stressed that Im paying my mortgage and dont want a forbearance. Instead they listed it on my

1 credit without authorization. When I called them they said it was an error n they are working on
 2 it. They ruined my wife and my credit.”

3 • “I called Wells Fargo, and asked what relief they could provide due to Covid-19.

4 . . . I am very familiar with how a forbearance versus a deferment works. I was adamant if all
 5 they could offer me was a forbearance that I was not interested and I was assured by the Wells
 6 Fargo rep that they would just put the 3 payments at the back end of the loan and it was not a
 7 forbearance so I agreed. Yesterday . . . I received a notice from Wells Fargo asking If I need to
 8 extend my forbearance or discuss repayment options for the missed payments. I am livid!”

9 29. Wells Fargo’s blunder is not an inconsequential administrative glitch. Forbearance can
 10 have grave impacts on a borrower’s credit history or access to credit. As Sen. Elizabeth Warren (D-
 11 Mass.) and Sen. Brian Schatz (D-Hawaii) wrote in a letter to Wells Fargo CEO Charles Scharf, the
 12 bank was “putting consumers at risk of greater financial hardship amidst one of the worst economic
 13 downturns in our country’s history.”

14 30. As NBC News reported regarding one the experience of one couple—Tammie and
 15 David Wilson—an unauthorized forbearance, “As long as the forbearance notation remains in their
 16 credit report, the Wilsons can’t take advantage of rock-bottom interest rates and are stuck at Wells
 17 Fargo.”

18 31. Wells Fargo may have been incentivized to place borrowers in forbearance because,
 19 once the forbearance period ends, those borrowers could be placed in a payment deferral program. And
 20 as part of COVID-19 relief, the GSEs provide servicers like Wells Fargo an incentive payment, capped
 21 at \$1,000 per mortgage, for placing borrowers in repayment or deferral plans:

22 **SERVICER INCENTIVES**

23 Bulletin 2020-15 stated that the Servicer incentive for a COVID-19 Payment Deferral would be communicated at a later
 date. With this Bulletin, we are informing Servicers of the COVID-19 Payment Deferral incentive amount, as well as
 making the following temporary updates to other Servicer incentives:

| Incentive Type | Incentive Amount |
|--|--|
| Repayment Plan | \$500 Effective for all repayment plans with a first payment due date under the repayment plan on or after July 1, 2020 |
| Payment Deferral/COVID-19 Payment Deferral | \$500 Effective immediately for all Payment Deferrals/COVID-19 Payment Deferrals (NOTE: Payment Deferral evaluations do not begin until on or after July 1, 2020) |

1 As NBC News reported, “In some circumstances, banks can receive revenue when their customers
 2 apply for mortgage forbearance or arrange to defer payments under the CARES Act. Fannie Mae, for
 3 example, pays banks servicing loans up to \$200 to cover legal fees associated with filing two notices of
 4 forbearance for each bankruptcy case. Once a borrower gets approval to defer his or her mortgage
 5 payments, a bank servicing the loan can receive \$500 from Fannie Mae.”

6 32. This is not the first time Wells Fargo has taken action that harms its customers without
 7 their consent. It is instead part of a well-established pattern at the bank. Most notably, Wells Fargo
 8 opened an estimated 3.5 million debit or credit accounts without customer consent, as alleged in a class
 9 action complaint brought by undersigned counsel in this District and resolved by a \$142 million
 10 settlement finally approved by the Hon. Vince Chhabria.

11 **B. Wells Fargo Placed Plaintiff’s Loans in Forbearance Without Her Consent.**

12 33. One of the many victims of Wells Fargo is Plaintiff Pamela Delpapa. Ms. Delpapa lost
 13 her job at a nail salon due to COVID-19. Concerned about whether she would be able to make her
 14 mortgage payments, she called Wells Fargo—her mortgage servicer—to learn about her options. At
 15 that point, she was paid in advance five months in her mortgage payments; in fact, the Wells Fargo
 16 representative she spoke to said she would *not* be a candidate for assistance at this time but should feel
 17 free to call back in five months. She relied on this misrepresentation to her detriment.

18 34. Unbeknownst to her, after that call Wells Fargo placed her loan in forbearance anyway.
 19 She only found out when she called her mortgage broker to refinance her home. Her mortgage broker
 20 told her she could not refinance because her loan was in forbearance. She was understandably shocked.

21 35. When she called Wells Fargo to complain, a Wells Fargo employee told her that when a
 22 borrower calls the bank and pushes the button directing them to COVID information on mortgages, the
 23 bank automatically places those accounts in forbearance. This aligns with what has happened to other
 24 consumers, as reflected in consumer complaints collected by the Consumer Financial Protection
 25 Bureau and reported in the media.

26 36. Ms. Delpapa never requested that her mortgage be placed in forbearance. In a June
 27 letter to her, Wells Fargo admitted it placed her mortgage in forbearance without her consent and
 28 without discussing it with her “in detail”:

1 We found that On March 17, 2020, your account was set up for the 90-day forbearance option
 2 that was being offered to our customers. After listening to the phone call between you and our
 3 representative, we discovered that you never requested to be placed on the plan nor was the plan
 4 discussed with you in detail. On May 21, 2020, we updated the account and removed your
 5 account from the forbearance plan as you requested. Additionally we updated our reporting to
 6 ensure the forbearance comment was removed.

7 37. The bank's letter also conceded that the by reporting her mortgage as in forbearance,
 8 Wells Fargo may have damaged Ms. Delpapa's ability get consumer credit, as she experienced
 9 firsthand:

10 The credit bureaus have independent credit score models. We cannot speculate how any of their
 11 proprietary models account for this; however, we do know, generally, those are not used for
 12 underwriting of credit. If you apply for credit while on a forbearance plan, however, the lender
 13 will see the "account in forbearance" comment on your credit report, and the fact that your
 14 account is in forbearance may impact your ability to qualify for new credit or refinance.

15 38. Wells Fargo's actions have thus caused concrete and particularized injury to Ms.
 16 Delpapa, which this complaint seeks to redress.

17 **VI. CLASS ACTION ALLEGATIONS**

18 39. Plaintiff brings this complaint on behalf of herself and all others similarly situated under
 19 Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3). The Class that Plaintiff seeks to represent is
 20 defined as follows:

21 All residential mortgage borrowers with a Government Sponsored Enterprise-
 22 backed loan for whom Wells Fargo Bank, N.A., placed a residential mortgage into
 23 forbearance under the Coronavirus Aid, Relief, and Economic Security (CARES)
 24 Act without receiving the borrower's request for a forbearance and affirmation
 25 that the borrower is experiencing a financial hardship due to COVID-19.

26 40. In addition, Plaintiff seeks to represent the following California Class:

27 All residential mortgage borrowers with a Government Sponsored Enterprise-backed
 28 loan for whom Wells Fargo Bank, N.A., placed a residential mortgage secured by real
 29 property in California into forbearance under the Coronavirus Aid, Relief, and
 30 Economic Security (CARES) Act without receiving the borrower's request for a
 31 forbearance and affirmation that the borrower is experiencing a financial hardship due to
 32 COVID-19.

1 41. Excluded from the Classes are Wells Fargo's officers, directors and employees; the
 2 judicial officers and associated court staff assigned to this case; and the immediate family members of
 3 such officers and staff.

4 42. **Numerosity:** The members of the Class are so numerous that joinder of all members
 5 would be impractical. Wells Fargo is one of the nation's largest home lenders and servicers, and media
 6 reports indicate borrowers in at least 14 states have experience non-requested forbearances. The
 7 Consumer Financial Protection Bureau has documented dozens of complaints. The precise numbers of
 8 members can be ascertained through discovery, including of Wells Fargo's records.

9 43. **Commonality and Predominance:** Common questions of law and fact predominate
 10 over any questions affecting only individual members of the Class. For Plaintiff and the Class, the
 11 common legal and factual questions include, but are not limited to the following:

- 12 A. Whether Wells Fargo negligently or intentionally enrolled customers in forbearance
 13 programs without their consent;
- 14 B. Whether Wells Fargo's Wells Fargo has breached terms implied in its contracts with
 15 Plaintiff and the Class Members;
- 16 C. Whether Wells Fargo's actions or inactions violated the consumer protection statutes
 17 invoked herein;
- 18 D. Whether Plaintiff and the Class members were damaged by Wells Fargo's conduct and,
 19 if so, the appropriate amount of damages;
- 20 E. Whether, because of Wells Fargo's misconduct, Plaintiff and the Class are entitled to
 21 equitable and declaratory relief, and, if so, the nature of such relief.

22 44. **Typicality:** The representative Plaintiff's claims are typical of the claims of the
 23 members of the Class. Plaintiff and all the members of the Class have been injured by the same
 24 wrongful practices of Wells Fargo. Plaintiff's claims arise from the same practices and course of
 25 conduct that give rise to the claims of the members of the Class and are based on the same legal
 26 theories.

45. **Adequacy:** Plaintiff will fully and adequately assert and protect the interests of the Class, and have retained class counsel who are experienced and qualified in prosecuting class actions. Neither Plaintiff nor her attorneys have any interests contrary to or in conflict with the Class.

46. **Predominance and Superiority:** A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit, because individual litigation of the claims of all members of the Class is economically unfeasible and procedurally impracticable. While the aggregate damages sustained by the Class are likely in the millions of dollars, the individual damages incurred by each Class member are too small to warrant the expense of individual suits. The likelihood of individual Class members prosecuting their own separate claims is remote, and even if every member of the Class could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases.

47. Further, individual members of the Class do not have a significant interest in individually controlling the prosecution of separate actions, and individualized litigation would also result in varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all of the parties and the court system because of multiple trials of the same factual and legal issues. Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action. In addition, Wells Fargo has acted or refused to act on grounds generally applicable to the Class and, as such, final injunctive relief or corresponding declaratory relief with regard to the members of the Class as a whole is appropriate.

48. Any difficulties in the management of this nationwide class will be minimal because California law will apply to all Class members' claims.

49. Wells Fargo has, or has access to, address and/or other contact information for the members of the Class, which may be used to provide notice of the pendency of this action.

VII. CAUSES OF ACTION

FIRST CAUSE OF ACTION

**Breach of Implied Covenant of Good Faith and Fair Dealing
Asserted on Behalf of Plaintiff and the Nationwide Class**

50. Plaintiff incorporates by reference every prior and subsequent allegation of this Complaint as if fully restated here.

1 51. Plaintiff brings this claim on behalf of herself and the Nationwide Class or, in the
 2 alternative, on behalf of herself and the California Class.

3 52. Plaintiff, the Class members, and Wells Fargo were parties to a contract, referred to as a
 4 Deed, Deed of Trust, or Security (collectively, “Deed”). Wells Fargo may be either a signatory to that
 5 contract, as the mortgage lender, or an assignee of that contract as mortgage servicer. In Plaintiff’s
 6 case, Wells Fargo, as the loan service, assumed the obligations of the original lender in Plaintiff’s
 7 Deed:

8 with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than
 9 the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be
 10 transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the
 Note purchaser.

11 53. In either case, those Deed’s for GSE-backed loans are substantially identical for all
 12 borrowers in material respects. The covenant of good faith and fair dealing is a common foundation
 13 inherent in all of the Deeds between Plaintiff, Class members, and Wells Fargo.

14 54. Regardless of its terms, every contract contains an implied covenant of good faith and
 15 fair dealing. The implied covenant obligates the parties to cooperate so that each party may obtain the
 16 full benefit of performance of the contract. The duty of good faith and fair dealing means that parties
 17 may not interfere with or fail to cooperate in the other party’s performance. Neither party may engage
 18 in conduct that impairs or prevents the other party from enjoying the benefits of the contract or engage
 19 in conduct that prevents the other party from performing under the contract.

20 55. Wells Fargo impliedly covenanted as a servicer that it would undertake its duties in
 21 good faith. In particular, Wells Fargo has a contractual duty under the Deed to apply payments it
 22 receives from borrower to interest, principal, and escrow items, in that order. Borrowers, in turn, must
 23 timely pay the amounts due for those items.

24 56. By placing Plaintiff and Class member in forbearance without their consent, Wells
 25 Fargo frustrated and interfered with the Plaintiff’s and Class members’ ability to perform under the
 26 Deeds and failed to cooperate with the Plaintiff’s and Class members’ performance of the contract.

27 57. No reasonable party would expect Wells Fargo would put their mortgage forbearance
 28 without their consent.

58. Wells Fargo likewise engaged in conduct that was contrary to the spirit of the contract and the Plaintiff and Class members' rights thereunder. Wells Fargo lacked diligence in performing its duties, acted recklessly in its servicing of the Plaintiff's and Class members' mortgages, and abused its power placing loans in forbearance without consent.

59. By its actions, Wells Fargo engaged in conduct that was contrary to the spirit of the contract, lacked diligence, and constituted an abuse of its power.

60. As a result of the Bank's breaches of the covenant of good faith and fair dealing, Plaintiff and the Class members were injured. Their damages include, but are not limited to, damage to their credit including increased borrowing costs.

SECOND CAUSE OF ACTION
Unjust Enrichment

61. Plaintiff incorporates by reference every prior and subsequent allegation of this Complaint as if fully restated here.

62. Plaintiff brings this claim on behalf of herself and the Nationwide Class or, in the alternative, on behalf of herself and the California Class.

63. Wells Fargo received benefits by placing mortgages in forbearance, including but not limited to extending the terms of loans, entitling Wells Fargo to additional servicing fees.

64. Wells Fargo was also enriched at the expense of Plaintiff and the Class because, by placing their mortgages in forbearance, it kept their loans on its own books, preventing Plaintiff and the Class from refinancing with another institution. Those forbearances also provided a predicate for Wells Fargo to place GSE-backed mortgages in payment deferrals or repayment plans, making Wells Fargo eligible for GSE incentive payments of up to \$1,000 per mortgage.

65. Wells Fargo's retention of these benefits is unjust because it placed those loans in forbearance without the consent of Plaintiff and the Class and in contravention of the requirements of the CARES Act.

66. As a result, Plaintiff and Class members are entitled to restitution, disgorgement, or both of the benefits Wells Fargo has unjustly retained, in the amount to be proven at trial.

THIRD CAUSE OF ACTION

**California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.*
Asserted on Behalf of Plaintiff and the California Class**

67. Plaintiff incorporates by reference every prior and subsequent allegation of this Complaint as if fully restated here.

68. Plaintiff brings this claim on behalf of the California Class.

69. California’s Unfair Competition Law (“UCL”), Business and Professions Code § 17200, prohibits any “unlawful, unfair, or fraudulent business act or practices.” Wells Fargo engaged in unlawful, fraudulent, and unfair business acts and practices in violation of the UCL as follows.

70. Wells Fargo violated the UCL's prohibition on fraudulent business acts or practices by failing to tell Plaintiff and Class members that, by merely contacting Wells Fargo, their loans would be placed into forbearance.

71. Wells Fargo’s omissions were material to Plaintiff and the Class. Had they known the truth—that Wells Fargo had a “hair trigger” system that automatically placed them in forbearance—Plaintiff and Class members would not have contacted Wells Fargo to learn about potential relief under the CARES Act. Defendants misrepresented, concealed, or failed to disclose the truth with the intention that consumers would rely on the misrepresentations, concealments, and omissions.

72. Plaintiff and Class Members relied Wells Fargo's omissions or half-truths to their detriment

73. Wells Fargo’s “hair trigger” forbearance program is also unlawful under the UCL because it violates Sections 4022 and 4023 of the CARES Act, which requires that a borrower affirmatively request that their mortgage be placed in forbearance, and affirmatively acknowledge they are experiencing a hardship due to COVID-19.

1 74. Additionally, Wells Fargo's practices are unlawful because they violate Regulation N,
 2 "Mortgage Acts and Practices—Advertising," which forbids "any person to make any material
 3 misrepresentation, expressly or by implication, in any commercial communication, regarding any term
 4 of any mortgage credit product[.]" 12 C.F.R. § 1014.3. Wells Fargo violated Regulation N by failing to
 5 inform borrowers that they were placing their mortgages in forbearance without their consent..
 6

7 75. Wells Fargo's practices were also unfair under the UCL because placing borrowers'
 8 mortgages in forbearance without their consent is unfair to Wells Fargo's borrowers: it is contrary to
 9 established public policy; immoral, unethical, oppressive or unscrupulous; and causes injury to
 10 consumers that outweighs its benefits.

11 76. Plaintiff and Class members suffered ascertainable loss and actual damages as a direct
 12 and proximate result of Defendants' misrepresentations and their concealment of and failure to
 13 disclose material information. Pursuant to Cal. Bus. & Prof. Code § 17200, Plaintiff and the Class seek
 14 an order enjoining Defendants' unfair and/or deceptive acts or practices; any such orders or judgments
 15 as may be necessary to restore to Plaintiff and the Class members any money acquired by unfair
 16 competition, including restitution, as provided in Cal. Bus. & Prof. Code §§ 17203 and 3345; and any
 17 other just and proper relief available under the California UCL. To the extent these remedies are
 18 equitable, Plaintiff seeks them in the alternative to any adequate remedy at law she may have
 19
 20

21 **FOURTH CAUSE OF ACTION**

22 **California Consumer Credit Reporting Act, Cal. Civ. Code § 1785. 25 *et seq.*** 23 **Asserted on Behalf of Plaintiff and the California Class**

24 77. Plaintiff incorporates by reference every prior and subsequent allegation of this
 25 Complaint as if fully restated here.

26 78. Plaintiff brings this claim on behalf of the California Class.

27 79. The California Consumer Credit Reporting Act (CCRA) provides that a "person shall
 28 not furnish information on a specific transaction or experience to any consumer credit reporting agency

1 if the person knows or should know the information is incomplete or inaccurate.” Cal. Civ. Code §
 2 1785.25(a).

3 80. Wells Fargo, a “person” under the CCRA, furnished information on Plaintiff’s and
 4 Class Member’s mortgage forbearances that it knew or should have known was incomplete or
 5 inaccurate to consumer credit reporting agencies.
 6

7 81. Wells Fargo acknowledged in its form letter to Plaintiff that it informed the consumer
 8 reporting agencies that Plaintiff’s mortgage was in forbearance:
 9

10 plan. We also provided the credit bureaus with a comment code that says the account was in a
 11 forbearance plan. We have validated with FICO that this ‘Account in Forbearance’ code does not

12 82. That information was incomplete, inaccurate, or materially misleading because Plaintiff
 13 did not request that her account be placed in forbearance, and it included information that was negative
 14 to Plaintiff and Class members.

15 83. Plaintiff suffered actual damage as a result of this violation because she was not able to
 16 pursue a refinancing or otherwise suffered harm to her credit.

17 84. Wells Fargo’s violation was willful under Cal. Civ. Code § 1785.31 because Wells
 18 Fargo acted with reckless disregard for the rights of Plaintiff and the Class in enacting a statutory
 19 scheme meant the help, not further harm, borrowers.

20 85. As a result of Wells Fargo’s negligent and willful violations of the CCRA, Plaintiff
 21 seeks all available remedies under the CCRA, including actual damages, court costs, loss of wages,
 22 attorney’s fees and, pain and suffering, and punitive damages.

23 FIFTH CAUSE OF ACTION

24 **Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code § 1788 *et seq.*** 25 **Asserted on Behalf of Plaintiff and the California Class**

26 86. Plaintiff incorporates by reference every prior and subsequent allegation of this
 27 Complaint as if fully restated here.

28 87. Plaintiff brings this claim on behalf of the California Class.

88. The Rosenthal Fair Debt Collection Practices Act (“Rosenthal FDCPA”) prohibits debt collectors from, among other things, making false, deceptive, or misleading representations in an effort to collect a debt. Cal. Civ. Code § 1788.

89. Wells Fargo is a “debt collector” because it “regularly . . . engages in debt collection” as a mortgage servicer. *See* Cal. Civ. Code § 1788.2(c). Plaintiff and Class members are persons, and their mortgage loans are “consumer debts” under the Rosenthal FDCPA. *Id.* § 1788.2(f), (g).

90. The Rosenthal FDCPA incorporates by reference and prohibits violations of the federal Fair Debt Collection Practices Act. Cal. Civ. Code § 1788.17. That includes the Federal Act's prohibition of "false, deceptive, or misleading representation or means in connection with the collection of any debt[,] including the false representation of the status of any debt, "communicating or threatening to communicate to any person credit information which is known or which should be known to be false," and the "use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer. 15 U.S.C. § 1692e(2), (8), (10).

91. Wells Fargo violated the Rosenthal FDCPA through its violations of Section 1692e of the Federal Act, when it provided false, deceptive, or misleading information about the mortgage debt of Plaintiff and the Class; i.e., that Plaintiff and the Class has requested a forbearance.

92. As a result of Wells Fargo's violation fo the State and Federal Acts, Plaintiff is entitled to actual and statutory damages, fees, and costs available under those Acts. *See* Cal. Civ. Code § 1788.17; 15 U.S.C. § 1692k.

VIII. REQUEST FOR RELIEF

93. Plaintiff, individually and on behalf of all others similarly situated, requests that the Court enter judgment against Defendant, as follows:

- A. Certify the Class and, under Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3), appoint Plaintiff as representative of the Class and appoint Plaintiff's counsel as Class counsel;
- B. Award declaratory relief, including but not limited to a declaration that Wells Fargo's actions and business practices are unlawful and that Wells Fargo must comply with state and federal lending laws;

- 1 C. Award injunctive relief, including public injunctive relief permanently enjoining Wells
- 2 Fargo from performing further unfair and unlawful acts as alleged;
- 3 D. Award all recoverable compensatory, statutory, and other damages sustained by
- 4 Plaintiff and the Class, including disgorgement, penalties, unjust enrichment, and all
- 5 other relief allowed under applicable law;
- 6 E. Grant Plaintiff and the Class awards of restitution and/or disgorgement of Wells Fargo's
- 7 profits from its unfair and unlawful practices described above;
- 8 F. Award all costs of prosecuting this action, including attorneys' fees and expert fees as
- 9 may be allowable under applicable law;
- 10 G. Award both pre-judgment and post-judgment interest on any amounts awarded;
- 11 H. Award treble or punitive damages insofar as they are allowed by applicable laws;
- 12 I. Award appropriate individual relief as requested above; and
- 13 J. Grant such other and further relief, including declaratory, injunctive, and equitable
- 14 relief, as the Court may deem proper.

IX. DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable.

1 DATED this 26th day of August, 2020.

2 KELLER ROHRBACK L.L.P.

3 By s/ Matthew J. Preusch

4 Matthew J. Preusch (SBN 298144)
5 801 Garden Street, Suite 301
6 Santa Barbara, CA 93101
7 (805) 456-1496
8 Fax (805) 456-1497
9 mpreusch@kellerrohrback.com

10 Derek W. Loeser, *pro hac vice forthcoming*
11 Gretchen Freeman Cappio, *pro hac vice*
12 *forthcoming*

13 KELLER ROHRBACK L.L.P.
14 1201 Third Avenue, Suite 3200
15 Seattle, WA 98101-3052
16 (206) 623-1900, Fax (206) 623-3384

17 *Attorneys for Plaintiff*